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President
Washington State University
French Administration Building
Room 422
1 Southeast Stadium Way
Pullman, WA 99164-1048

AUG 19 2011

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Dear Dr. Floyd:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Washington State University (WSU) a total of \$82,500 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any or all of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV, HEA programs). Under the Department's regulations, the Department may impose a fine of up to \$27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on WSU's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). Specifically, the ASR must include a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; policies encouraging prompt reporting of crimes to the police; written procedures to encourage professional counselors to inform the persons they are counseling about procedures on voluntary, confidential reporting of crimes; a statement that includes sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses. 34 C.F.R. § 668.46(b)(2).

Administrative Actions and Appeals Service Group
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In addition, the ASR must report statistics for the three most recent calendar years concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property, and on public property. 34 C.F.R. § 668.46(c). An institution must compile and publish crime statistics for each separate campus. 34 C.F.R. § 668.46(d). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. The ASR must be distributed to current students and employees and must be made available to applicants for admission and employment to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

The Department conducted an on-site program review at WSU from July 21, 2009 through July 23, 2009. The focus of the review was WSU's compliance with the Clery Act. The review was not the result of any specific complaint or allegation of non-compliance. WSU was selected from a sample of institutions of higher learning with sworn police departments.

The review included an examination of WSU's police incident reports and arrest reports; and 57 student conduct violation reports, arrest records, student conduct violation records, and policies and procedures related to the Clery Act. The reviewers also interviewed relevant WSU staff.

On July 6, 2010, the Department issued a Program Review Report to WSU. The review found that WSU had not complied with the Clery Act and with the Department's implementing regulations. WSU responded to the report on August 10, 2010. After reviewing WSU's response, the Department issued its Final Program Review Determination (FPRD) letter to WSU on March 8, 2011. The FPRD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD, which concluded that WSU failed to properly disclose two (2) forcible sex offenses for the 2007 calendar year. Additionally, WSU's ASR at the time of review lacked required policy statements.

WSU FAILED TO PROPERLY COMPILE AND DISCLOSE TWO (2) FORCIBLE SEX CRIMES

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available statistical information related to certain reported crimes and arrest/campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistical information must be disclosed by location – on campus (dormitories vs. residential facilities), in or on non-campus buildings or property, and on public property – and must be provided for the three most recent calendar years. C.F.R §§ 668.46(a), 668.46(c)(1) – (c)(4).

The statistical reporting must be disclosed and made available as part of the institution's ASR by October 1 of each year, and it must be electronically submitted to the Department for its inclusion in the Campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit information. C.F.R § 668.41(e)(1)-(e)(5).

WSU failed to include two (2) forcible sex offenses in the campus crime statistics for calendar year 2007. Specifically, on August 31, 2007, an individual called the Washington State University Police Department (WSUPD) and reported an incident which was recorded as incident report #07-W3421. WSUPD investigated the incident and identified it as a "Domestic Dispute." On September 14, 2007, a supplemental narrative report was filed by a WSUPD officer. The narrative stated: "On 090907 at about 1700hrs, {the victim} brought a written statement to the police department saying much of what she had verbally said on 083107. She added a few things saying that her husband might have given her sleeping pills. She also said that her husband confessed to her that one of his friends had raped her while she was asleep." WSU did not follow up on the victim's statement and continued to identify the incident as a Domestic Dispute in its records. WSU did not include the incident as a forcible sex offense in its crime statistics for calendar year 2007. In its response to the program review report, WSU conceded that incident #07-W3421 was improperly identified as a Domestic Dispute. WSU contends that WSUPD tried to contact the victim but was unable to do so.

On January 27, 2007, a resident hall director reported to WSUPD that a rape had occurred in one of the residence halls. A WSUPD officer who investigated the incident identified the reported crime as a rape and reported the incident as # 07-W0425. A WSUPD records manager later improperly unfounded the incident, causing it to be excluded from the crime statistics. Consequently, WSU did not include the crime incident as a forcible sex offense in its annual crime statistics for calendar year 2007. WSU's response states that the records personnel unfounded incident #07-W0425 because the victim did not wish to provide substantiating information. For Clery Act reporting purposes, a determination that a crime is unfounded can only be made by an appropriate law enforcement official not a records manager.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the data when it is presented to students and employees who can use the data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics. WSU's correction of the crime statistics only after the Department alerted the University of its obligations does not excuse its earlier failure to comply with its legal obligations. The correction of violations does not diminish the seriousness of not correctly reporting these incidents at the time they occurred.

WSU'S CAMPUS SECURITY REPORTS OMITTED REQUIRED POLICY STATEMENTS

The Department's regulations require that participating institutions prepare an ASR that contains a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; policies encouraging prompt reporting of crimes to the police; written procedures to encourage professional counselors to inform the persons they are counseling about procedures on voluntary, confidential reporting of crimes; a statement that includes sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses. 34 C.F.R. § 668.46(b)(2).

WSU's ASR did not have a policy regarding the preparation of crime statistics. At the time of the review, WSU was providing its ASR under the title *the Cougar Safety*. The reviewers noted that WSU's policy regarding the preparation of crime statistics was contained in the WSUPD manual, which is not generally available to the campus community.

WSU's ASR also did not contain written procedures to encourage professional counselors to inform persons they are counseling about procedures on voluntary, confidential reporting of crimes. The reviewers noted that WSU's policy regarding professional counseling was included in a publication available to WSU Counseling Services.

In addition, WSU's disciplinary procedures for Sexual Assault failed to include a description of the sanctions that WSU could impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses.

WSU has since revised its policies and its statements regarding campus safety to address policies previously omitted. However, the efforts do not excuse WSU's failure to have required policy statements at the time of review, as required by the Clery Act and the Department's regulations.

In determining the amount of fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R. § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year for which complete funding data is available for WSU is 2009-2010 award year. According to the Department records, WSU received approximately \$25,840,227 in Federal Pell Grant funds; approximately \$139,176,152 in Federal Family Educational Loan (FFEL) funds and approximately \$4,243,471 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,670,973; for institutions

participating in the FFEL and/or the William D. Ford Federal Direct Loan programs, the median funding level is \$3,376,518, and for institutions participating in the Campus-Based programs, the median funding level is \$288,078. Accordingly, WSU is a large institution because its funding levels for Pell Grant and FFEL funds exceeds the median funding levels for those Title IV, HEA programs.

As detailed in this letter, the Clery Act violations identified at WSU are very serious. These failures have endangered WSU's students and employees who must be able to rely on the disclosures of campus crime statistics, policies and statements, and the accurate reporting of crime and statistics in order to take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and WSU's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed \$27,500 for each of the two (2) forcible sex offences that were not reported in the crime statistics for calendar year 2007. This is a serious violation because current and prospective students/employees must be able to rely on accurate and complete campus crime information. I have assessed \$27,500 for WSU's failure to include required policy statements in its ASR.

The fine of \$82,500 will be imposed on **September 12, 2011**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. WSU may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If WSU chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance
830 First Street, NE – UCP-3, Room 84F2
Washington, DC 20002-8019

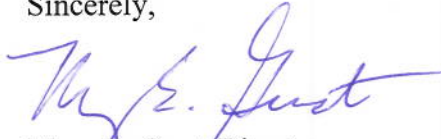
Upon receipt of such a request, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of WSU's case to a hearing official who will conduct an independent hearing. WSU is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If WSU does not request a hearing but submits written material instead, I will consider that material and notify WSU of the amount of fine, if any, that will be imposed.

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT WSU SUBMITS MUST BE RECEIVED BY SEPTEMBER 12, 2011; OTHERWISE, THE \$82,500 FINE WILL BE EFFECTIVE ON THAT DATE.

Dr. Elson S. Floyd
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If you have any questions or desire any additional explanation of WSU's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,



Mary E. Gust, Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Program Compliance
U.S. Department of Education

Enclosure